



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACC  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO The Board of Environmental Protection

FROM Andrew Flint, Bureau of Remediation and Waste Management

DATE May 1, 2008

RE Administrative Consent Agreement, Estes Oil Burner Service, Inc

\*\*\*\*\*

**Statute and Rule Reference:** The *Oil Discharge Prevention and Pollution Control law*, 38 M R S A § 543 states in relevant part: "The discharge of oil into or upon any lands adjoining the seacoast, or into or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or other waters of the State or any public or private water supply or onto lands adjacent to, on, or over such waters of the State is prohibited "

The *Oil Discharge Prevention and Pollution Control law*, 38 M R S A § 548 states in relevant part "Any person discharging or suffering the discharge of oil in the manner prohibited by section 543 shall immediately undertake to remove that discharge to the commissioner's satisfaction "

The *Oil Discharge Prevention and Pollution Control law*, 38 M R S A § 550 states in relevant part "Any person who causes or is responsible for a discharge in violation of section 543 is not subject to any fines or civil penalties if that person reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner. ."

**Location:** Chaves residence, 48 Bittersweet Lane, Ogunquit, Maine

**Description:** Estes Oil Burner Service, Inc ("Estes") has entered into the attached Consent Agreement as proposed by Department staff in order to resolve violations of 38 M R.S A §§ 543 and 548 In May of 2007 Estes caused two prohibited discharges of oil at 48 Bittersweet Lane, Ogunquit, Maine Estes failed to report to the Department the discovery of the prohibited discharges of oil and failed to immediately undertake to remove the oil discharge to the Commissioner's satisfaction Subsequently, Estes reimbursed all clean up and investigation costs

**Environmental Issues:** The discharge of oil impacted groundwater, soil, and the basement of the subject property The spill occurred approximately 70 feet from a residential water supply well

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287 7688 FAX (207) 287 7826  
RAY BLDG , HOSPITAL ST

BANGOR  
106 HOGAN ROAD  
BANGOR, MAINE 04401  
(207) 941 4570 FAX (207) 941 4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822 6300 FAX (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769 2094  
(207) 764-0477 FAX (207) 760 3143

**Department Recommendation:** The Department recommends acceptance of this Administrative Consent Agreement as proposed, stipulating a monetary penalty of six thousand five hundred dollars (\$6,500 00), and the following requirements

- a Clean up any future oil spills immediately to the Department's satisfaction, including immediately reporting all oil spills to the Department of Environmental Protection within two (2) hours of discovery, and
- b Submit for the Department's review and approval a written operating procedure for spill reporting and response to be distributed to Estes staff



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

IN THE MATTER OF

ESTES OIL BURNER SERVICE, INC	)	
519 U S ROUTE 1	)	ADMINISTRATIVE CONSENT
YORK, MAINE	)	AGREEMENT
YORK COUNTY	)	(38 M R S A §347-A)
OIL DISCHARGE PREVENTION AND	)	
POLLUTION CONTROL	)	

This Agreement, by and among Estes Oil Burner Service, Inc ("Estes"), and the State of Maine, Department of the Attorney General ("AG"), as approved by the Maine Board of Environmental Protection ("Board"), is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1)

THE PARTIES AGREE AS FOLLOWS

1. Estes is a corporation in good standing which is organized and exists under the laws of the State of Maine Michael L. Estes is the President of Estes
2. Throughout the period of time addressed by this Agreement, Estes was subject to the following Maine environmental standards
  - a. *Oil Discharge Prevention and Pollution Control law*, 38 M R S A § 543  
This section prohibits the unlicensed discharge of oil to Waters of the State, including ground water
  - b. *Oil Discharge Prevention and Pollution Control law*, 38 M R S A § 548  
This section requires a person causing or suffering a prohibited discharge of oil to immediately clean up the discharge to the Commissioner's satisfaction
3. David Chaves owns property located at 48 Bittersweet Lane in the Town of Ogunquit, Maine ("Chaves property") The Chaves property is described as Lot #6-3-1 on Town of Ogunquit Tax Map #21 and is further described in a deed recorded on Book 14127, Page 165 in the York County Registry of Deeds
4. On May 29, 2007, Estes caused a prohibited discharge of between 20 and 50 gallons of oil to the basement of the Chaves property via a disconnected oil tank vent pipe This prohibited discharge of oil impacted the basement of the Chaves property, soil, and groundwater Department staff investigating the spill determined that this discharge of oil to groundwater extended beyond the boundaries of the basement of the Chaves property

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287 7688 FAX (207) 287 7826  
RAY BLDG. HOSPITAL ST

BANGOR  
106 HOGAN ROAD  
BANGOR, MAINE 04401  
(207) 941 4570 FAX (207) 941 4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6100 FAX (207) 822 6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769 2094  
(207) 764-0477 FAX (207) 760-3143

ESTES OIL BURNER SERVICE, INC  
YORK, MAINE  
YORK COUNTY  
OIL DISCHARGE PREVENTION AND  
POLLUTION CONTROL

2  
)  
)  
)  
)

ADMINISTRATIVE  
CONSENT AGREEMENT  
(38 M R S A § 347-A)

This prohibited discharge of oil threatened the private water supply located at the Chaves property, which is located approximately 70 feet from the spill location. On June 5, 2007, Estes reported to the Department the discovery of an oil discharge at the Chaves property.

- 5 At approximately 12:00 PM on June 6, 2007, Department staff discovered a second prohibited discharge of oil at the Chaves property. A review of the Department's records demonstrates that Estes caused a prohibited discharge of approximately 0.25 gallons of oil to soil located at the Chaves property while servicing an outdoor aboveground oil storage in the winter of 2006-2007. This prohibited discharge of oil impacted soil at the Chaves property.
- 6 A review of the Department's records demonstrates that Estes failed to immediately undertake to clean up the prohibited oil discharges described in Paragraphs 4 and 5 of this Agreement to the Department's satisfaction.
- 7 By discharging oil as described in Paragraphs 4, and 5 of this Agreement, Estes violated on two (2) occasions 38 M.R.S.A. § 543.
- 8 By failing to immediately undertake to clean up prohibited discharges of oil to the commissioner's satisfaction as described in Paragraph 6 of this Agreement, Estes violated on two (2) occasions 38 M.R.S.A. § 548.
- 9 On June 26, 2007, the Department issued a Notice of Violation to Estes for the activities described in Paragraphs 7 and 8 of this Agreement, in conformance with 38 M.R.S.A. § 347-A(1)(B). On August 23, 2007, Estes filed a written response to the Notice of Violation.
- 10 This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General.
- 11 To resolve the violations identified in this Consent Agreement, Estes agrees to:
  - A Immediately cease discharging oil,
  - B In the future, clean up any oil spills immediately to the Department's satisfaction, including immediately reporting all oil spills to the Department of Environmental Protection within two (2) hours of discovery. This may be done by calling 1-800-482-0777 (24 hours). This also includes taking actions to control and clean up a spill before Department staff is notified or arrives on site, and properly disposing of oil and associated waste. The Department will make the decision on how much clean up is needed.

ESTES OIL BURNER SERVICE, INC  
YORK, MAINE  
YORK COUNTY  
OIL DISCHARGE PREVENTION AND  
POLLUTION CONTROL

3  
)  
)  
)  
)

ADMINISTRATIVE  
CONSENT AGREEMENT  
(38 M R S A § 347-A)

- C Within thirty (30) days of Estes's signature to this agreement, submit for the Department's review and approval a written operating procedure for spill reporting and emergency response to be distributed to Estes's fuel marketing and distribution staff. The procedure must include the Maine oil spill reporting phone numbers (e.g., 1-800-482-0777)
- D Immediately upon signing this agreement, pay to the Treasurer, State of Maine c/o the Ground Water Oil Clean up Fund the sum of six thousand five dollars (\$6,500) as a civil monetary penalty
- 12 The Department and the AG grant a release of their cause of action against Estes for the specific violations listed in Paragraphs 7 and 8 of this Agreement on the express condition that all actions listed in Paragraph 11 above are completed in accordance with the express terms and conditions of this Agreement, except that no release is granted for any contamination of air, surface waters, ground waters, or soils as a result of the operation of the subject facility or related activities. Nothing in this Agreement shall prevent the Department from requiring additional corrective action if the Department determines that such action is necessary to protect public health, safety or the environment. Nothing in this Agreement shall prevent the Department from seeking recovery of its investigation and clean up costs pursuant to Maine law. The release shall not become effective until all requirements of this Agreement are satisfied
- 13 Non-compliance with this Agreement voids the release set forth in Paragraph 12 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies
- 14 Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, including but not limited to, permitting or licensing requirements
- 15 The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement of four (4) pages

ESTES OIL BURNER SERVICE, INC

BY

Michael L. Estes  
Michael L. Estes, PRESIDENT

DATE

3/24/08

ESTES OIL BURNER SERVICE, INC  
YORK, MAINE  
YORK COUNTY  
OIL DISCHARGE PREVENTION AND  
POLLUTION CONTROL

4  
)  
)  
)  
)

ADMINISTRATIVE  
CONSENT AGREEMENT  
(38 M R S A § 347-A)

STATE OF MAINE, DEPARTMENT OF ATTORNEY GENERAL

BY \_\_\_\_\_  
Mary Sauer, Assistant Attorney General

DATE \_\_\_\_\_

APPROVED BY

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY \_\_\_\_\_  
Ernest W Hilton, CHAIR

DATE \_\_\_\_\_